

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JONATHAN Z. TYLER
Claimant

VS.

GOODYEAR TIRE & RUBBER COMPANY
Respondent

AND

LIBERTY MUTUAL INS. CO.
Insurance Carrier

Docket No. 1,038,177

ORDER

STATEMENT OF THE CASE

On February 26, 2010, the Kansas Court of Appeals reversed and remanded the Board's March 26, 2009, Order for further consideration in accord with *Bergstrom v. Spears Manufacturing Company*¹. By agreement of the parties, the Board placed this matter on its summary calendar docket for disposition without oral argument. George H. Pearson, of Topeka, Kansas, appeared for claimant. John A. Bausch, of Topeka, Kansas, appeared for respondent and its insurance carrier (respondent).

The record considered by the Board and the parties' stipulations are listed in the November 25, 2008, Award entered by Administrative Law Judge (ALJ) Brad E. Avery and the March 26, 2009, Order entered by the Board.

In his November 25, 2008, Award, the ALJ found that claimant had a work disability of 41.5 percent. The respondent appealed the Award to the Board. In its Order of March 26, 2009, the Board held that claimant was not entitled a work disability and limited his award to his functional impairment of 6.5 percent. The Board's Order was appealed to the Court of Appeals. Based on the Kansas Supreme Court's opinion in *Bergstrom*, the

¹ *Bergstrom v. Spears Manufacturing Company*, 289 Kan. 605, 214 P.3d 676 (2009).

Court of Appeals remanded this matter to the Board with instructions to reinstate the award of the ALJ.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated November 25, 2008, is reinstated, and claimant's permanent partial disability is 41.5 percent.

IT IS SO ORDERED.

Dated this _____ day of April, 2010.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
John A. Bausch, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge